

LAKE MINNETONKA CONSERVATION DISTRICT
BOARD OF DIRECTORS
6:00 P.M., April 13, 2022
Wayzata City Hall

WORK SESSION

6:00 p.m. to 7:00 p.m.

Members Present: Gregg Thomas, Tonka Bay; Rich Anderson, Orono; Ben Brandt, Mound; Mark Chase, Spring Park; Michael Kirkwood, Minnetrista; Dennis Klohs, Minnetonka Beach; Mark Kroll, Excelsior; Denny Newell, Woodland; Nicole Stone, Minnetonka; and Jake Walesch, Deephaven. Also present: Troy Gilchrist, LMCD Legal Counsel; Vickie Schleuning, Executive Director; and Maisyn Prueter, Administrative Coordinator.

Members Absent: Dan Baasen, Wayzata; Bill Cook, Greenwood; Ann Hoelscher, Victoria, and Deborah Zorn, Shorewood.

Persons in Audience: Eric Evenson

1. Managing Risk: State Open Meeting Laws, Conflict of Interest, LMCD Business Policies

Gilchrist provided training to the Board on State open meeting laws, conflict of interest and LMCD business policies. He provided clarification on items within those topics. Due to time limitations, the information will be continued at a future meeting.

The work session was adjourned at 7:02 p.m.

FORMAL MEETING

7:00pm

1. CALL TO ORDER

Chair Thomas called the meeting to order at 7:00 p.m.

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

Members present: Gregg Thomas, Tonka Bay; Rich Anderson, Orono; Ben Brandt, Mound; Mark Chase, Spring Park; Michael Kirkwood, Minnetrista; Dennis Klohs, Minnetonka Beach; Mark Kroll, Excelsior; Denny Newell, Woodland; Nicole Stone, Minnetonka; and Jake Walesch, Deephaven. Also present: Troy Gilchrist, LMCD Legal Counsel; and Vickie Schleuning, Executive Director.

Members absent: Dan Baasen, Wayzata; Bill Cook, Greenwood; Ann Hoelscher, Victoria; and Deborah Zorn, Shorewood

Persons in Audience: Jay Soule, Jordan Hagel, Keenashanne Maher, Ashley Bergdoll, Brandon Audette, Sgt. Richard Waldon, David Engebretsen, Phillipa Hartley, and Yvonne Cheek.

4. APPROVAL OF AGENDA

MOTION: Kirkwood moved, Brandt seconded to approve the agenda as submitted.

VOTE: Motion carried unanimously.

5. CHAIR ANNOUNCEMENTS

There were no Chair announcements.

6. APPROVAL OF MINUTES- 03/23/2022 LMCD Regular Board Meeting

MOTION: Brandt moved, Stone seconded to approve the 03/23/2022 LMCD Regular Board Meeting minutes as submitted.

VOTE: Ayes (8), Abstained (2), (Kirkwood and Walesch). Motion carried.

7. APPROVAL OF CONSENT AGENDA

MOTION: Kroll moved, Stone seconded to approve the consent agenda as presented. Items so approved included: **7A**) Audit of Vouchers (04/01/2022 – 04/15/2022).

VOTE: Motion carried unanimously.

8. CONTRIBUTION RECOGNITION

None.

9. PUBLIC COMMENTS- Persons in attendance, subjects not on the agenda (limited to 5 minutes)

There were no public comments.

10. PUBLIC HEARING

A) Joint Variance Applications for 21100 Excelsior Blvd and 5600 Maple Heights Road, Greenwood, MN 55331, St. Albans Bay, Adjusted Dock Use Area (setbacks)

Schleuning presented a joint variance application from two properties and the potential actions the Board could choose to take. She stated that the variance would be to adjust the dock use area, primarily related to length and side setbacks. She stated that for the purpose of this application they will view the dock use area as one for the two properties. She provided background information on the properties, proposed boat storage units (BSUs), proposed setbacks, proposed length, and boat slip walkways. She provided additional background information on the properties and previous litigation.

She stated that property ownerships have changed, and it is the desire of all parties to resolve the current ongoing litigation with intent of providing a more desirable, safer docking arrangement for all three parties resulting in submission of these joint variance applications. She stated that LMCD staff has spent extensive time and involvement over the years, from litigation to complaints and consultation on these properties and commended the properties owners for proposing this shared use proposal in which all the neighbors have good use. She reviewed the proposed Site Plan and variance review criteria. She stated that based on the history of these sites, the request, and overall legal consequences based on the LMCD Code and case law, it is recommended that the LMCD continue to work with the parties to accomplish an agreed upon resolution to the litigation. She stated that staff recommends the Board approve with the minimum conditions noted in the staff report and presentation. She stated that no comments or feedback were received from agencies and noted that the City of Greenwood expressed support for the request.

Walesch asked if all the parties are in agreement that they would like this approved as presented.

Schleuning confirmed that all the parties are in agreement with this proposal. She acknowledged that it was a lot of work to get to that point.

Thomas opened the public hearing at 7:20 p.m. No comments were offered, and the public hearing was closed at 7:20 p.m.

Kirkwood asked if everyone understands the length of their boat must fall within those dimensions. It was confirmed to be so.

MOTION: Kroll moved, Brandt seconded to direct LMCD legal counsel to prepare Findings of Fact and Order approving the joint variance applications from Keenashanne Maher, owners of 21100 Excelsior Blvd and Jordan Hagel, owners of 5600 Maple Heights Rd, for final action at the April 27, 2022 LMCD Board meeting.

VOTE: Motion carried unanimously.

Jordan Hagel, 5600 Maple Heights Road, asked if they can start on the dock or whether they need to wait for the official approval on April 27th.

Schleuning stated that technically the project would be approved at the next meeting, and they would not recommend work begin before that time.

Gilchrist stated that the motion tonight was to direct preparation of the documents of approval and the formal approval will occur at the next meeting.

Anderson asked if the Board would be okay with work beginning at this time, as it is an opportune time to complete that work. He stated that if the item were not ultimately approved, the dock could be removed.

Gilchrist stated that he would not give that advice, but if the applicant chose to follow that path, the liability would fall to them.

Schleuning stated that once the court documents and easements are finalized, those will also need to be submitted along with the updated Site Plan as part of the process.

Gilchrist confirmed that the LMCD would like the order to be integrated with this case to ensure there are no gaps in the future should the properties change hands again.

B) Petition for Quiet Water Area on Buoy Channel at Cedar Point West between Cooks Bay and Upper Lower Lake

Schleuning stated that a request for a quiet water area (QWA) has been received for the buoy channel at Cedar Point West between Cooks Bay and Upper Lower Lake and reviewed the actions the Board could take. She stated that LMCD received concerns regarding safety in the buoy channel and the City of Minnetrista submitted a letter expressing concerns related to the high traffic levels, large wakes, and safety concerns supporting the request for the QWA at the buoy channel. She stated that since receiving the request, staff has made several visits to the site and as observed traffic, violations, and potential safety concerns. She explained the criteria that are used to determine QWA. She stated that this area was previously reviewed in 2010, noting that the area is very shallow. She reviewed the different observations that were completed during 2021 from LMCD staff and Water Patrol. She also reviewed the summary of findings determined from the observations. She provided examples of where buoys could be placed in the channel. She stated that a public hearing is required for this consideration. She noted that several comments have been received from the public and those were provided to the Board. She stated that based on observations and communication with Hennepin County Sheriff Office Water Patrol, staff recommends a Code amendment to designate QWA for the Cedar Point West buoy channel at a distance to reduce safety risks of those using the channel in a manner that does not relocate or create a new problem. She stated that Hennepin County will provide two slow/minimum wake buoys for this channel, new or relocated.

Thomas opened the public hearing at 7:46 p.m.

Thomas noted that the office received about six emails all in support of a QWA designation and read aloud the names and addresses of those residents.

No additional comments were offered, and the public hearing was closed at 7:48 p.m.

Anderson stated that it has been well established that there are going to be two buoys placed for safety and therefore the question would be whether two or four buoys should be placed. He stated that he would prefer to leave Hennepin County to place the two additional buoys and support that action rather than placing additional burden on the LMCD.

MOTION: Anderson moved, Newell seconded to support the proposed action of Hennepin County Water Patrol to place two buoys in the channel as described and not designate the channel as a quiet waters area.

Further discussion: Kroll stated that everyone realizes that this is a problem area and boat traffic needs to be slowed. He stated that if Water Patrol is going to place buoys, he would wonder what the action before the LMCD would be to consider. He asked if the intention was to place four buoys rather than the two proposed.

Anderson stated that if four buoys are going to be placed, two would need to be supplied and placed by the LMCD.

Schleuning stated that the information from the Water Patrol came to her today. She stated that signage and brochures would still need to be done by LMCD regardless of this action. She confirmed that LMCD staff believe two buoys would be sufficient for this location.

Thomas clarified that staff would suggest declaration of this as a QWA. He stated that the buoy placement and quantity is then determined by Water Patrol.

Schleuning stated that if the buoys are not placed out far enough, it moves the issue down further to adjacent areas.

Kirkwood stated that he honors the point that there should be a wide enough area to create a safe traffic area. He stated that he would support two buoys.

Newell stated that the comparative provided by staff was the other Cedar Point in Woodland, which is in his neighborhood. He stated that from his perspective the buoys were very effective in controlling the problems that were occurring. He stated that people do slow down when they see the buoys. He agreed the area should be declared QWA and the Water Patrol should determine the locations of the buoys.

Walesch stated that from what he understands of the motion on the floor, Anderson moved to have two buoys that the County would fund and install and that the LMCD would designate this a QWA.

Anderson stated that if the Board designates this as a QWA there is a list of requirements that come into play at the burden of the LMCD. He stated that his motion did not include the designation of QWA as that would already occur from the placement of the buoys. He stated that the Water Patrol is already planning to complete these actions, therefore he did not feel a designation of QWA is needed by the Board.

Walesch asked if the Board needs to designate this as a QWA.

Gilchrist stated that the Board would not have to designate this as a QWA but there is a list within the Code of QWA which specifies a speed limit. He was unsure if there is a speed limit that applies to simple buoy placement. He noted that the QWA designation would provide additional enforcement opportunities that would not exist without that designation. He stated that the motion as stands would deny the request for designation of QWA.

Walesch stated that if the QWA is designated, would be recommendations have to be included as well.

Gilchrist stated that this would be a one sentence Code amendment that would add this as a QWA.

Walesch referenced the requirements to post flyers and distribute materials at launches.

Gilchrist confirmed that would not be required but is included in an LMCD policy. He stated that this would not create a new separate set of obligations, it would simply add this area to the list.

Schleuning stated that they do want to promote this as an area of reduced speed and therefore it would be added to promotional materials and to the website.

Newell stated that once the buoys are placed, whether it is declared this or that, Water Patrol can still pull over a boat.

Schleuning noted that it would receive more promotion if designated as a QWA and would provide additional tools for enforcement similar to the other areas.

Stone asked if Anderson would be against the QWA designation now that it has been further explained.

Anderson confirmed that he would still be against something that causes additional work of the LMCD and would prefer to leave the task to Water Patrol.

Kroll asked if it is in the bylaws that negative motions cannot be made. He stated that this would appear to say that the LMCD is going to nothing as Water Patrol would be putting the buoys up at no cost.

Thomas stated that another way around that would be to deny the request for QWA.

Gilchrist agreed that a negative motion can be confusing as the effectiveness would be to deny the QWA.

Anderson stated that he views the QWA as a nonissue because of the actions the Water Patrol will take on its own.

Walesch asked if there are areas with buoys that are not designated as QWA.

Schleuning was unsure but could not think of any, but will review.

Walesch stated that if someone is speeding through the area without the speed limit of QWA he would not believe there would be enforcement to fall upon.

Gilchrist referenced language within the rules and suspected that there would be something when designated by buoy there is a speed limit. He stated that the LMCD language is a little different and therefore without the QWA designation, any enforcement in that channel would need to come from the State rules rather than LMCD Code.

Kroll stated that he would have trouble supporting this action. He stated that Water Patrol is willing to place the buoys and therefore did not believe the motion makes sense.

Brandt asked the confidence that Water Patrol is going to place the buoys for this season. He stated that it is clear that there is a safety issue that needs to be addressed.

Schleuning stated that she heard officially today that buoys would be placed, but LMCD cannot require or force that to be done by others. She stated that adding the QWA designation would provide another tool for enforcement as that language is clear and enforceable. She stated that designating this as a QWA would not interfere with the placement of the buoys but would ensure the speed limit would be in place whether the buoys are placed or not and would be consistent with other locations on Lake Minnetonka.

Thomas stated that the LMCD has designated QWAs throughout the lake. He stated that one of Anderson's concerns is payment for the buoys and asked how the other QWA buoys were funded.

Schleuning stated that Hennepin County stated they will pay for and bring the buoys out and take them in similar to other Quiet Water Areas. She estimated a number of QWAs on the lake.

VOTE: Ayes (1) (Anderson), Nays (9). Motion failed.

Thomas invited the representative from Water Patrol to make comment.

The representative declined to comment.

Kirkwood asked if it would be beneficial to table the QWA request until there is certainty on the safety determination by the Water Patrol.

Schleuning did not believe there was a reason to wait as the actions are complementary.

Kirkwood stated that if the QWA were approved, the LMCD would still support the two buoys funded by Hennepin County but there is no other obligation or financial cost to the LMCD. He stated that it would add the channel to the list of QWA and provide an enforcement tool for the Water Patrol.

Schleuning identified the current QWAs and noted that they are along similar water channels.

Walesch stated that from what he understands, the County and Water Patrol are moving forward to order and place buoys in the channel irrespective of what the LMCD decides. He stated that he would like to know more information about QWAs and would like to compare enforcement of QWA areas and areas marked with buoys. He stated that he would also like feedback on whether the Water Patrol would like the QWA designation.

MOTION: Walesch moved, Stone seconded to continue this discussion to the April 27, 2022 Board meeting for additional review and time to address concerns.

Further discussion: Walesch commented that it seems the buoys will be placed no matter the decision of the Board and therefore he would like more information on what the QWA designation would mean.

VOTE: Motion carried unanimously. (Anderson abstained)

Kroll stated that he always assumed that you cannot speed when you see a slow wake buoy, so he would also be interested to know the difference.

Thomas stated that he would be more interested in knowing what the QWA designation would or would not do, rather than knowing about funding of buoys. He asked if there is something to be gained or lost with the designation.

11. OTHER BUSINESS

There was no other business.

12. OLD BUSINESS

There was no old business.

13. NEW BUSINESS

A) Hennepin County Sheriff's Office Funding Request for Dedicated Water Patrol Services for 2022

Newell stated that Save the Lake discussed this the previous night and the Committee unanimously supports the request and thanks the Sheriff's Office for the work they complete.

Schleuning stated that \$78,250 was raised through Save the Lake contributions the previous year and was dedicated for this purpose. The remainder of the funding will come from reserves or continue to be raised this year.

MOTION: Anderson moved, Kroll seconded to approve the Hennepin County Sheriff's Office funding request in the amount of \$84,000 from LMCD Save the Lake funds to provide dedicated patrol services to Lake Minnetonka during peak boating times and authorize staff to enter into and execute an agreement for these law enforcement and boater safety services with the same contract terms used the previous year.

Further discussion: Schleuning clarified that it was not LMCD staff that expressed concerns with the contract language. It was the legal representation from Hennepin County that wanted changes to the contract and staff were attempting to work with all parties.

Thomas stated that the Board does not need to get into contract language and should leave that to staff and legal counsel.

Gilchrist stated that the Board could take the proposed approach, but if the attorney representing the County believes the language needs to be changed, this would setup a take it or leave it situation. He stated that typically they prefer a cooperative approach with governmental units.

Kroll stated that he misunderstood the motion and withdrew his second on the motion.

Anderson stated that he does not want to pay attorney fees for something that may not be needed but recognize that negotiation may be needed.

Kroll suggested that the motion be amended to state based on last year's contract but providing flexibility to staff.

Walesch offered a friendly amendment that the contract be substantially similar to that of the previous year.

Anderson accepted the amendment.

Kroll reinstated his second and the friendly amendment.

MOTION: Anderson moved, Kroll seconded to approve the Hennepin County Sheriff's Office funding request in the amount of \$84,000 from LMCD Save the Lake funds to provide dedicated patrol services to Lake Minnetonka during peak boating times and authorize staff to enter into and execute an agreement for these law enforcement and boater safety services with a substantially similar contract terms used the previous year.

VOTE: Ayes (8), Nay (1) (Thomas). Motion carried.

14. TREASURER REPORT

Anderson referenced his previous suggestion for quarterly reporting but noted that he has determined that would be cost prohibitive. He asked for details on why the Board is using a bank in North Dakota.

Walesch noted that bank is out of North Dakota but has branches in Minnesota.

15. EXECUTIVE DIRECTOR UPDATE

Schleuning provided the following information:

- A new employee will start on April 25th
- New website information regarding licenses and permits, and low water information

16. STANDING LMCD COMMITTEE/WORKGROUP

Aquatic Invasive Species: Brandt had nothing new to report.

Communications: No report.

Finance: Anderson reported that he requested clarification on the charges from legal consulting and provided examples of legal costs for the different recent applications the Board has considered. He asked if LMCD could charge applicants for the legal time spent reviewing their application.

Gilchrist stated that it is not uncommon in the zoning world to have a required escrow for a permit submittal with the understanding that the City incurs costs to review the application. He noted that the escrow is used to reimburse the City for legal and engineering fees related to the review of the application. He believed it would be appropriate to consider that but noted that the last time the LMCD considered that, it triggered a backlash.

Operations: No report.

Save the Lake: Newell commented that the group is finishing thank yous for last year and has a goal of raising \$90,000 for this year. He stated that \$5,000 has been allocated to repair/replace buoys lights. He also advised of an upcoming boater education class.

17. ADJOURNMENT

There being no further business, the meeting was adjourned at 8:35 p.m.

Gregg Thomas, Chair

Dan Baasen, Secretary